

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
MRS. ROGER DELZER,

Appellant,

v.

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Respondent.

PCHB No. 83-210

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
ORDER

This matter, the appeal of a denial of an application for surface water appropriation from Chumstick Creek, came on for hearing before the Pollution Control Hearings Board; Gayle Rothrock, Chairman, sitting for and as the Board, on April 2, 1984, at Wenatchee, Washington. The proceedings were electronically recorded.

Barbara (Mrs. Roger) Delzer appeared and represented herself and her husband. Wick Dufford, Assistant Attorney General, appeared and represented the Department of Ecology.

Witnesses were sworn and testified. Exhibits were examined and

1 admitted. Argument was heard. From the testimony heard and exhibits
2 examined, the Board makes these

3 FINDINGS OF FACT

4 I

5 Roger and Barbara Delzer own and reside on property lying between
6 Chumstick Creek and Highway 209 four miles north of Leavenworth in
7 Chelan County. They have a 30-foot square patch of raspberries and
8 strawberries, and the balance of a quarter acre of land in planted
9 garden. They have a one-half acre lawn and some open land.

10 II

11 Appellants utilize a 15-foot deep, hand-dug well near the creek
12 and house where the water table is below ground just 10 feet. Delzers
13 use a 1/2 horsepower pump and send the water uphill to their home.
14 Water has been continuously drawn from this well for years.

15 Appellants Delzer have also withdrawn water from Chumstick Creek
16 since 1975 to supplement their supply from the well in summertime. It
17 is hot and dry in the summer and the creek also runs low from the
18 weather effects and irrigation appropriations along the creek.

19 In August of 1983 Chumstick Creek was flowing approximately 1.5
20 cfs adjacent to Delzer's property. During low flow periods in dry
21 years, reaches of Chumstick Creek are dry under current use patterns.
22 Chumstick Creek is a perennial stream.

23 III

24 The surface water of the perennial streams and associated shallow
25 ground water within the Chumstick Creek Basin exhibit significant

26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW & ORDER
PCHB No. 83-210

1 hydraulic continuity. These waters have been fully appropriated for
2 several years. Water shortages and disputes, in fact, precipitated a
3 General Adjudication of the Chumstick Creek Drainage Basin which was
4 completed in April of 1983. This adjudication confirmed Delzer's
5 class 55 ground water right. No other water rights are appurtenant to
6 appellant's property.

7 IV

8 The respondent DOE has put in place a Wenatchee River Basin
9 Instream Resources Protection Program wherein a base flow is to be
10 preserved in area waters, including Chumstick Creek, by encouraging
11 and utilizing alternate sources of water. Use of storage tanks,
12 better pumps, and 60- to 70-foot deep wells are examples of alternate
13 sources of water for area residents.

14 V

15 Respondent DOE denied appellant's application (S4-24042) for 0.01
16 cfs surface water withdrawal, enough water to summer irrigate one acre
17 of their land, on October 31, 1983. From this appellants appealed to
18 the Board on November 22, 1983.

19 VI

20 Any Conclusion of Law which should be deemed a Finding of Fact is
21 hereby adopted as such.

22 From these Findings of Fact the Board comes to these

23 CONCLUSIONS OF LAW

24 I

25 The Board has jurisdiction over these persons and this matter.

26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW & ORDER
PCHD No. 83-210

1 RCW 43.21B.

2 II

3 Applications for appropriation of ground water must meet the tests
4 of RCW 90.03.290, 90.44, and 90.54 before a permit can be recommended
5 for issuance.

6 As a major part of its evaluation, the DOE makes these four
7 determinations: 1) what water, if any, is available; 2) to what
8 beneficial use is the water to be applied; 3) will the appropriation
9 impair existing rights; and 4) will the appropriation detrimentally
10 affect the public welfare. RCW 90.03.290.

11 III

12 The proposed surface water withdrawal for irrigation purposes is a
13 beneficial use under the Water Code.

14 IV

15 Surface water is generally not available for further appropriation
16 from Chumstick Creek since a minimum instream flow must be maintained
17 under provisions of the Water Code and its implementing regulations,
18 WAC 173-545.

19 V

20 Authorizing this appropriation would be detrimental to existing
21 rights. There are senior rights both upstream and downstream which
22 are dependent on the available flows for stockwatering and domestic
23 use.

24 VI

25 Issuance of a surface water permit here would be contrary to the

26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW & ORDER
PCHD No. 83-210

1 public interest. The added stress on the resource of such a
2 withdrawal during low flows is unnecessary when other reasonable
3 alternate withdrawal and pumping methods are available. (See Finding
4 of Fact IV.) RCW 90.54 and WAC 173-545.

5 VII

6 Any Finding of Fact which should be deemed a Conclusion of Law is
7 hereby adopted as such.

8 From these Conclusions the Board enters this
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

ORDER

The disapproval of surface water application No. S4-24042 is affirmed.

DATED this 8th day of May, 1984.

POLLUTION CONTROL HEARINGS BOARD

Gayle Rothrock
GAYLE ROTHROCK, Chairman

(See Concurring Opinion)
Lawrence J. FAULK, Vice Chairman

1 CONCURRING OPINION - FAULK

2
3 I concur with the result but wish to preserve my thoughts
4 concerning an alternate approach that would be more beneficial to the
5 citizens.

6 DOE confirms that they are uncertain as to the water usage in
7 Chumstick Creek Drainage Basin. The appellants indicated that the
8 minimum relief sought was 0.01 cfs for irrigation of one acre of land.

9 It seems to me that DOE should issue a temporary permit for
10 appellant to utilize the water from Chumstick Creek this summer. If
11 the analysis of actual usage shows there is water available for
12 appropriation, then they could finalize applicant's temporary permit.

13 If on the other hand there is not adequate water to serve the
14 confirmed water rights users, then DOE could regulate the water usage.

15 This seems to me to be a more reasonable and just approach.

16
17  5/7/84
18 LAWRENCE S. FAULK, Vice Chairman
19
20
21
22
23
24
25